

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Jane C. Avery

v.

Civil No. 09-cv-265-JD

Robert W. Hughes

O R D E R

Judgment was entered in this case in October of 2010, following partial summary judgment and a jury verdict in favor of Jane C. Avery on her claims arising from a failed real estate transaction with Robert W. Hughes. Hughes appealed, and on November 18, 2011, the judgment was affirmed. Avery now petitions to reopen the case, for a hearing to determine Hughes's ability to pay the judgment, which Avery represents now exceeds \$301,281.04, and to set a schedule for Hughes to make periodic payments.

Hughes opposes Avery's petition. Hughes does not dispute the amount of the outstanding judgment against him. Instead, he states, without a supporting affidavit or documentation, that he is unable to make payments on the judgment. He contends that because of his financial condition, "a hearing on the Plaintiff's motion for periodic payments would be an inefficient use of judicial resources."

As Avery contends and Hughes does not dispute, a party may enforce a judgment using the procedures provided by state law in the state where the court is located. Fed. R. Civ. P. 69(a)(1). In addition, a judgment creditor may obtain discovery, including from the judgment debtor, to help in executing on the judgment. Fed. R. Civ. P. 69(a)(2). Under New Hampshire law, the court "in which the judgment is rendered shall . . . upon petition of the plaintiff after judgment, order the defendant to appear in court for [an] inquiry" into "the defendant's ability to pay the judgment in full." RSA 524:6-a. The court may also "order the defendant to make such periodic payments as the court in its discretion deems appropriate." Id.

Therefore, it is necessary to schedule a hearing to determine Hughes's ability to pay the judgment against him in this case.

Conclusion

For the foregoing reasons, the plaintiff's petition (document no. 90) is granted. A hearing on the defendant's ability to pay the judgment and to set a schedule of periodic payments, if necessary, will be held on **Wednesday, June 12, 2013, at 2:00 p.m.**

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

May 9, 2013

cc: Laurie R. Bishop, Esquire
Martin P. Honigberg, Esquire
Christopher James Pyles, Esquire
William C. Saturley, Esquire